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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Twelfth session

Summary record of the 203rd meeting
Held at the Palais Wilson, Geneva, on Wednesday, 8 March 2017, at 3 p.m.

Chair: Mr. López Ortega (Rapporteur)

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Ecuador

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Mr. López Ortega, Rapporteur, took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Ecuador (CED/C/ECU/1; CED/C/ECU/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Ecuador took places at the Committee table.*

2. **Mr. de la Vega** (Ecuador), introducing the initial report of Ecuador (CED/C/ECU/1), said that in recent decades his country had proved its commitment to human rights and the protection of life by acceding to all relevant conventions of the inter-American and international systems and by meeting its obligations towards international monitoring bodies. Although there had been fewer cases of enforced disappearance in Ecuador than in some other Latin American countries, his country had nonetheless experienced some painful episodes, chiefly in the period between 1984 and 1988. The Government had responded by directly addressing the issue under a change-oriented approach that aimed to prevent enforced disappearance from ever happening again. In that context, it had developed three lines of action to guide its policy efforts.

3. The first line of action consisted in recognizing and prosecuting past cases of enforced disappearance. In 2007, the Truth Commission had been established to investigate serious violations of human rights and crimes against humanity; its report, released in 2010, had identified 456 victims, including 17 victims of enforced disappearance. In 2013, the Act on Reparation for Victims and Prosecution of Serious Human Rights Violations and Crimes against Humanity had been adopted into law, recognizing the State's responsibility for the human rights violations documented by the Truth Commission and establishing a reparations mechanism. That same year, the Vaca, Cajas and Jarrín case had become the first of its kind to be prosecuted, with charges brought against 10 senior officers of the armed forces and the national police after more than 25 years of impunity; the case was to be tried in April 2017. The González et al. case (known as the Fybeca case), which related to a police raid in 2003 at a pharmacy of that name and in which eight individuals had been extrajudicially executed and four had been forcibly disappeared, had also successfully been brought to trial, resulting in the conviction of 13 people for extrajudicial execution, including 6 police officers. In that same case, in June 2016 charges of enforced disappearance had been brought against 15 individuals, including a former government minister and a retired senior police officer; 12 of the persons had been remanded in custody and the other 3 prohibited from leaving the country. One of the four persons who had disappeared after the police raid had been located by the Attorney General's Office 13 years later and, considering that the necessary guarantees were in place, had decided to return to the country under the protection and support scheme for victims, witnesses and other participants in criminal proceedings. With the investigation phase now completed, it was hoped that a trial date would be set shortly.

4. The second line of action related to the development of a legal framework to address the problem of enforced disappearance in a comprehensive manner. The precepts established in the Convention were enshrined in the Constitution and in legislation, which defined enforced disappearance as a serious criminal offence that was not subject to any statute of limitations. Judicial procedures had been developed with a view to combating impunity, protecting witnesses and fostering cooperation between States, while mechanisms have been put in place to support prevention efforts, guarantee that victims had access to the truth and provide restitution, compensation, rehabilitation, guarantees of non-repetition and satisfaction of rights violated.

5. The third line of action referred to the development of public policies, methodologies, institutions and technical and human capacity to create a society free of enforced disappearance. Over the past decade, the Ecuadorian State had undergone a profound transformation as a result of which respect for human rights was observed throughout its structure and in keeping with a concept of comprehensive security that aimed to protect the rights and liberties of individuals. That new approach situated citizens as the

key actors in individual and collective security processes, with the outcome that no cases of enforced disappearance had been registered in Ecuador during the reporting period.

6. The Government recognized that its obligations to the Committee lay principally in addressing enforced disappearance; however, it also believed in vigorously combating all forms of disappearance and did so in a number of ways. Most notably, its efforts to protect and dignify life and to raise living standards over the previous decade had led to a drastic reduction in the murder rate, had driven down inequality and had lifted more than 2 million Ecuadorians out of poverty.

7. Specific efforts to address the phenomenon of disappearances in general were ongoing in a number of spheres. To build human and technical capacity in the area of investigations, mandatory protocols had been developed for the national police, the Attorney General's Office and the courts. In 2013, the National Directorate for Offences against Life, Violent Death, Disappearance, Extortion and Illegal Confinement had been created within the national police and included an investigative unit with responsibility for locating disappeared persons; a similar special unit had been set up within the Attorney General's Office. The country's 10 criminal and forensic laboratories were outfitted with state-of-the-art technology, complemented by fingerprint and DNA databases and experts trained in forensic medicine, anthropology and psychology, ballistics and other areas. With an eye to fostering greater citizen participation, channels had been created for the public to report information about possible disappearances in ways that protected the identity of the person reporting the information as well as the confidentiality of the information. Persons reporting information could also be referred to the protection and support scheme for victims, witnesses and other participants in criminal proceedings; under that scheme, action by various public sector bodies and civil society organizations was coordinated by the Attorney General's Office in order to safeguard the well-being of victims, witnesses and other persons at risk. Communications strategies and capacity had also been developed, notably through the launch of the Ayúdanos a Encontrarlo (Help Us Find Him) campaign in which images of disappeared persons were disseminated via traditional and non-traditional media (social networks) and rewards of up to US$ 200,000 were offered for information leading to the resolution of cases. In the interest of providing a holistic approach to cases of disappeared persons, the President of Ecuador had launched and was actively involved in a comprehensive follow-up mechanism for missing persons cases: every six months, over a dozen public institutions met with missing persons' family members to review the status of investigations, offer various support services and develop new strategies and policies for handling cases of disappearances.

8. **Mr. Huhle** (Country Rapporteur) said that Ecuador was one of the few countries in Latin America and the Caribbean that had ratified articles 31 and 32 of the Convention, which showed that it took its obligations seriously. Referring to the document submitted by the Ombudsman's Office according to which 91 per cent of the over 4,500 cases of disappeared persons had been resolved, he wished to know how the delegation could be certain that none of the 400-odd unresolved cases involved enforced disappearance and whether those unresolved cases were disaggregated in terms of the cause and circumstances of the disappearance. He also wondered whether the Government maintained a unified database that documented and analysed all disappearances, regardless of their cause, and whether it kept a register of unidentified human remains, which the Committee believed was crucial to the prevention of enforced disappearance.

9. In respect of the investigation into the disappearance of José del Carmen Molano Ríos, opened in March 2013, he wished to know what progress had been made and whether that investigation was proceeding on an assumption of enforced disappearance, which would be contrary to the assertion that no such disappearances had taken place. A further question related to trafficking in persons, in which regard various international forums had recognized that Ecuador was a source, destination and transit country for the trafficking of men, women and children. The Committee would be grateful for information on how those cases were investigated and prosecuted, considering that other countries had found there to be a connection between human trafficking and the crime of enforced disappearance. Did the State party maintain statistics in relation to trafficking? The delegation should also explain how the international instruments described in the replies to the list of issues

(CED/C/ECU/Q/1/Add.1, para. 20) had been incorporated into the protection and support scheme for victims, witnesses and other participants in criminal proceedings.

10. **Mr. Corcuera Cabezut** (Country Rapporteur) said that the Committee was gratified to note that the Criminal Code of 2014 defined the offences of enforced disappearance and crimes against humanity. However, he was concerned about the language in article 84 of the Code because the Spanish phrase "con lo cual se impida el ejercicio de garantías constitucionales o legales" (thereby preventing the exercise of constitutional or legal guarantees) used the subjunctive form "impida" rather than the indicative form "impide" that appeared in the corresponding article of the Inter-American Convention on Forced Disappearance of Persons (art. II). He therefore invited the delegation to confirm that "preventing the exercise of constitutional or legal guarantees" formed part of the criminal conduct and was not, as article 84 seemed to suggest, a consequence of it.

11. Given the reports of possible disappearances perpetrated by individuals without the authorization, support or acquiescence of the State, he wished to know what legal provisions or offences the State party had established to ensure compliance with its obligations under article 3 of the Convention. While he was grateful for the explanation provided in the replies to the effect that the Constitutional Court had ruled in favour of the constitutionality of the Convention, the question asked in the list of issues had been meant to elicit information about specific cases in which the courts had invoked or applied provisions of the Convention.

12. In the information provided in respect of the Fybeca case, it was unclear whether the verdicts handed down related to the charges of enforced disappearance or to the charges of extrajudicial execution. If the former was the case, had the judges invoked the Convention in their judgments, and to what extent? The Committee would also be grateful for an explanation of the words "abduction committed under the modality of enforced disappearance", since it understood that the Criminal Code contained a separate definition of enforced disappearance, thus making the reference to abduction unnecessary.

13. The delegation should describe any other cases in which Convention provisions other than those relating to enforced disappearance had been violated, such as for negligence in maintaining registers of persons deprived of their liberty.

14. Given that, according to the reply to paragraph 2 of the list of issues, the offence of enforced disappearance could be applied to unresolved cases whose origins predated the 2014 entry into force of the Criminal Code, he wished to know whether prosecutors had taken that approach in the Fybeca case, or in any other cases, or whether the proceedings had been instituted before the Code had entered into force.

15. **Mr. Huhle** said that while detailed information had been provided on the Vaca, Cajas and Jarrín case and the Fybeca case, which together accounted for 41 per cent of victims of enforced disappearance in the State party, the delegation should describe the other cases that related to enforced disappearance, including their progress, which the Committee understood had not yet reached the investigation stage. Regarding the Fybeca case, he wished to know whether the Government had started extradition proceedings so that the police officer who had fled the country would face justice in Ecuador. Referring to the measures taken to advance judicial investigations, more information should be provided about the non-governmental organization Historical Human Remains Detection and the reason for contacting that organization.

16. **Mr. Corcuera Cabezut** said that he would be grateful if the delegation could confirm that under the Constitution and the Criminal Code, the offence of enforced disappearance was not subject to any statute of limitations, irrespective of whether or not the enforced disappearance constituted a crime against humanity. Concerning the observation made in the replies to the list of issues to the effect that the suspension of police officers during an investigation into their conduct would be contrary to the presumption of innocence, he would appreciate clarification of whether the "temporary reassignment" arrangement removed those individuals from the chain of command and guaranteed that they would not be involved in the investigation. It should also be explained whether officers who had been temporarily reassigned were prevented from participating in the investigation from its outset or only as from when the temporary reassignment had been ordered. Would

other members of the same police force who had not been placed on temporary reassignment also be prevented from participating? The Committee would be interested to know whether the same provisions applied to other law enforcement, security or military forces, considering that the measures envisaged under the Armed Forces Personnel Act seemed to be limited to instances in which a court summons had been issued. Were similar temporary measures also applied in other State bodies to officials suspected of involvement in an enforced disappearance?

17. **Mr. Huhle** said that more information was needed about the specialized functions of the National Directorate for Offences against Life, Violent Death, Disappearance, Extortion and Illegal Confinement. He would be grateful if the delegation could provide a copy of the Search, Investigation and Location Protocol for Disappeared, Missing or Lost Persons, which had not been submitted to the Committee, and wondered which other protocols or manuals, if any, were used in the search for missing and disappeared persons.

18. **Mr. Corcuera Cabezut** said that, in view of the reply to paragraph 9 of the list of issues, the delegation should confirm that where existing extradition treaties did not refer specifically to enforced disappearance, Ecuador adhered to multilateral treaties containing provisions on enforced disappearance, including the Convention. It should also describe how the Government would proceed if it received an extradition request from a State that was not a party to the Convention; might it apply to the Convention on the basis of articles 424 and 425 of the Constitution? Lastly, he asked for an update on the progress achieved, if any, in the cases of alleged enforced disappearance mentioned in paragraph 94 of the report and for information regarding any new requests for cooperation that had been made or received by the Government.

19. **Mr. Hazan** said that he was interested to learn about the unit for investigating enforced disappearances and related offences that existed within the Attorney General's Office, including details concerning its structure, personnel and working methodologies.

20. **Mr. Figallo Rivadeneyra** said that he, too, was unclear about the applicability of the statute of limitations, since article 84 of the Criminal Code defined enforced disappearance as an ordinary offence while article 89 mentioned it as a crime against humanity. Moreover, article 417, which stated that in cases of enforced disappearance, the statutory period would be counted from the day on which the person appeared or had the necessary elements to formulate an accusation for the crime in question (para. 3 (d)), was incompatible with the assertion that the crime was not subject to any statute of limitations. He would also be grateful for an explanation of what was meant by "having the necessary elements to formulate an accusation".

21. **Mr. Yakushiji** said that the delegation should explain the legal status of the Convention in the domestic law of Ecuador, specifically whether the 2009 decision of the Constitutional Court meant that enforced disappearance was to be regarded as a serious violation of human rights under the Constitution. In respect of the Fybeca case, he wished to know whether the charges of "abduction committed under the modality of enforced disappearance" meant that the crime would be prosecuted not under article 84 of the Criminal Code but by invoking the violation of constitutional rights. In that regard, the delegation should explain what effect article 84 had in respect of acts of enforced disappearance that had been committed before the entry into force of the Code, in the light of the continuous nature of the crime.

The meeting was suspended at 3.50 p.m. and resumed at 4.15 p.m.

22. **Ms. Argüello** (Ecuador) said that the Government had formulated a public policy for the investigation and punishment of cases of enforced disappearance in line with article 3 of the Convention. The National Directorate for Offences against Life, Violent Death, Disappearance, Extortion and Illegal Confinement was a highly specialized institution that followed technical procedures for investigation and information analysis and management; it operated nationwide and received support from the national police. Its human and material resources were distributed according to the burden of crime, population and size of each of its areas of operation. Persons with relevant expertise were recruited on the basis of profiles and aptitude testing, and continuous training was provided by national and international instructors, other police forces and United Nations bodies. That training

process had helped to consolidated the State party's expertise in such areas as investigative techniques, the chain of custody, genetic profiling and forensic medicine.

23. Since 2014, the Directorate had received 17,230 reports of missing persons and had resolved 94 per cent of cases. Most cases had involved lost children or individuals who had absented themselves owing to economic and social factors, including domestic, academic and psychological problems. The State had been able to promptly resolve the majority of those cases thanks to inter-institutional coordination, timely intervention and the array of tools used. The Government was under a legal obligation to continue investigating the remaining 6 per cent of cases. Responsibility for statistics on enforced and other types of disappearance was shared between the Attorney General's Office and the Directorate, with integrated statistics being used to formulate policies, design institutional structures and allocate resources. The Government also worked with schools and young people to design and implement prevention strategies.

24. In the area of trafficking, Ecuador pursued an inter-institutional public policy with the twin goals of protecting and providing redress for victims and combating impunity. The policy was implemented by three committees — one focusing on prevention, one on protection and assistance and one on investigation — which were formed of representatives from various ministries and public bodies. That inter-institutional structure was guided by a standardized protocol that aimed to ensure timely intervention, and coordination with other countries was used to secure the rescue of victims. The national police and the Attorney General's Office each had special investigative units to combat trafficking in persons; however, no evidence had been found to establish a connection between trafficking in persons and enforced disappearance. Information would be submitted to the Committee in writing providing statistics on the dismantling of trafficking gangs, arrests and rescues.

25. Regarding the temporary reassignment of police personnel, it was indeed the case that those officers were barred from participating in investigations, as they were suspended from their functions and removed from the chain of command until such time as the investigation was complete.

26. Lastly, she clarified that investigations into cases of enforced disappearance were not carried out by the investigative unit of the national police but by the special unit of the Attorney General's Office. While prosecutors in the Attorney General's Office were empowered to delegate tasks in the conduct of such investigations, the national police had not yet received any requests to participate.

27. **Mr. Cuellar** (Ecuador) said that searches for persons who had gone missing were carried out by the missing persons unit of the national police pursuant to the Search, Investigation and Location Protocol for Disappeared, Missing or Lost Persons. The unit initiated such searches ex officio following the filing of a missing persons report by the relatives or friends of the person concerned, who were then interviewed, given an explanation of the procedure and, if necessary, referred to the National Directorate for Offences against Life, Violent Death, Disappearance, Extortion and Illegal Confinement in order to receive medical treatment or psychological support.

28. Data concerning the missing person were entered into an information system and dispatched to relevant units of the police, and an initial search and rescue operation was immediately launched. A special canine search brigade helped to locate persons or human remains; where necessary, legal professionals were called upon to help assess the missing person's legal status. Missing persons' relatives and members of the general population could learn about the progress of cases on the website of the national police. The State was required by law to continue searching for persons reported as missing until the person had been found or his or her fate had been ascertained. If the police unit had reason to believe that a person had disappeared in connection with a criminal offence, it submitted a request to the Attorney General's Office for the initiation of a preliminary investigation. Various alert systems were used to assist in locating missing persons, and the data collected were routinely cross-referenced with those contained in the genetic profile registry.

29. **Mr. Andino** (Ecuador) said that a distinction was drawn in the Criminal Code between the offences of simple kidnapping (*secuestro*) and kidnapping for ransom (*secuestro extorsivo*), the penalties for which ranged, in the first case, from 5 to 7 years'

imprisonment, and in the second, from 10 to 13 years. The word "*secuestro*" did not appear in the definition of enforced disappearance set out in article 84 of the Code. The word "*impida*", which appeared in that definition in the present subjunctive form of the verb "to prevent", reflected the effect produced by the criminal conduct, namely, the impairment of the right of victims of enforced disappearance to enjoy the constitutional or legal guarantees that they would otherwise have enjoyed if they had been lawfully deprived of their liberty.

30. Article 89 of the Criminal Code provided for the definition of the offence of enforced disappearance when committed as part of a widespread or systematic attack against a civilian population, as set forth in the Rome Statute of the International Criminal Court. Both article 84 and article 89 were included in the section of the Code on crimes against humanity. In accordance with article 80 of the Constitution and articles 16 and 75 of the Code, neither the launching of criminal proceedings nor the imposition of penalties in respect of those offences was subject to statutory limitations. The provisions contained in article 417 (3) (d) of the Code referred to disappearances that fell outside the scope of enforced disappearance and in which agents of the State were not implicated.

31. **Mr. Tinajero Mullo** (Ecuador) said that, in 2014, regulations had been adopted on the establishment of a protection and support scheme for victims, witnesses and other participants in criminal proceedings. Between 2014 and 2016, a total of approximately US$ 2.4 million had been allocated to the scheme, whose aim was to ensure that the opinions and concerns of protected victims were taken into account at appropriate stages of the proceedings without undermining their rights, physical or mental recuperation or entitlement to the various services offered by the scheme.

32. The National Directorate for Victim Redress and Protection from Impunity, which was part of the Ombudsman's Office, had provided assistance to 312 of the 459 victims who were listed in the final report of the Truth Commission; to date, 248 agreements for material compensation had been concluded. In addition, 734 persons had been assisted by the National Programme for Victim Redress and Protection from Impunity since its launch in February 2015; of those, 258 were direct victims and 476 were indirect victims, including spouses and relatives. The Ministry of Justice, Human Rights and Religious Affairs was responsible for providing financial compensation for harm suffered by victims; 76 victims had been designated to receive benefits through 26 compensation agreements, the latter having been concluded by a negotiations committee following multiple rounds of negotiations. One of the cases being finalized was that of Erwin Vivar, a victim in the Fybeca case that had been documented by the Truth Commission. Thanks to the efforts of the Attorney General's Office, Mr. Vivar had been located, had returned to Ecuador and had been placed in the protection and support scheme for victims, witnesses and other participants in criminal proceedings.

33. The Truth Commission and Human Rights Directorate of the Attorney General's Office was responsible for investigating and monitoring cases of human rights violations, as well as for coordinating and cooperating with government agencies in charge of providing protection to victims, witnesses and other participants in criminal proceedings. The Directorate gathered information deemed pertinent on individuals, entities or public servants; carried out visits or inspections; obtained expert opinions for investigative purposes; and followed up and monitored cases that were in progress. The case of José del Carmen Molano Ríos had originated on charges of abduction but was currently being investigated as an alleged enforced disappearance. The Government would provide additional written information concerning the progress of the case to the Committee in due course.

34. **Ms. Argüello** (Ecuador) said that the remaining unresolved missing persons cases, which represented some six per cent of all such cases, were currently at the preliminary investigation stage. To date, they had not yielded any findings that might lead the Attorney General's Office to believe that any of them involved the commission of an enforced disappearance.

35. In the original Fybeca case, the national police disciplinary court had investigated the deaths of the eight persons but had dismissed the murder proceedings against the police officers and had closed the investigation. Subsequently, the investigation had been

reopened on the claim of a vitiated res judicata, which was an international offence that could be invoked in order to reopen a case in which there had been failure to observe rules of international law prohibiting impunity in a legal matter. As a result of the reopened investigation, the police officers had been convicted of murder by extrajudicial execution and sentenced to 16 years of extraordinary rigorous imprisonment. They had not been tried for extrajudicial execution since, at the time of the events in 2003, that offence had not been defined as such in Ecuadorian criminal legislation.

36. On the strength of further investigations into the case, proceedings had subsequently been initiated on charges of abduction committed under the modality of enforced disappearance; those proceedings had been at the preliminary investigation stage since June 2016. The charge of enforced disappearance had not been made because the events in the proceeding had occurred in 2003, thus prior to the characterization of that offence as such under Ecuadorian criminal law. In both of the reopened investigations, international standards had been applied in order to prevent impunity. In the most recent investigation, during the preliminary hearing the prosecutor had had discretion to reclassify the criminal conduct and to bring it into line with the definition of the offence of enforced disappearance contained in the Convention. Since enforced disappearance was a continuous crime, to which statutory limitations did not apply, and since the perpetrators were members of the national police, the Attorney General had tried the case on the charge of abduction committed under the modality of enforced disappearance.

37. As to the question of extradition, given that the Attorney General's Office had gathered sufficient evidence to charge Eduardo González — the leader of the police operation carried out at the Fybeca pharmacy — with the offence of extrajudicial execution amounting to serious human rights violations, the Ministry of Foreign Affairs had transmitted the necessary documents to the Department of State of the United States of America in order to request the extradition of Mr. González. That request was currently still pending.

38. The Search, Investigation and Location Protocol for Disappeared, Missing or Lost Persons, a copy of which would be transmitted to the Committee in due course, set out the administrative procedures that the special units of the national police, as first responders, and the Attorney General's Office and other judicial and support units were required to observe in the search for missing persons and the investigation into suspected criminal conduct, the aim being to protect the life, physical integrity and personal freedom of such persons. On being informed that a person had gone missing, the authorities took immediate action to discover the truth, locate the person and, if a crime had been committed, to arrest and prosecute the perpetrator. No case was closed until the person had been found or the perpetrator had been brought to justice. The Protocol called for inter-institutional coordination and support in carrying out the measures required to find a missing person, including among units responsible for health, civil registration, education, employment and migration. The Attorney General's Office and the National Directorate for Offences against Life, Violent Death, Disappearance, Extortion and Illegal Confinement had put together procedural manuals for the investigation of cases of missing persons on the basis of the Protocol.

39. **Mr. Huhle** said he would like to know whether, in cases of human trafficking, the State party systematically checked for the two additional elements — namely, the participation of organs or agents of the State and their refusal to acknowledge the whereabouts of the victim — that would characterize the offence as an enforced disappearance. With regard to the separation between the investigation of cases of abduction, kidnapping or missing persons, on the one hand, and enforced disappearance, on the other, he wished to caution that decisions taken too early on the basis of insufficient information as to which kind of disappearance was involved might lead to the closure of cases before a thorough investigation could be conducted to determine whether or not they constituted enforced disappearance. In that connection, he wished to know which line of investigation was being pursued in the case of Mr. Molano Ríos and whether or not the police had excluded his case as a possible enforced disappearance.

40. **Mr. Corcuera Cabezut** said that he would like to know whether the provision on enforced disappearance contained in article 84 of the Criminal Code, which was placed in

the chapter on serious violations of human rights and offences against international humanitarian law in the section on crimes against humanity, could also be applied in an isolated case of enforced disappearance that had not been committed in the context of a widespread or systematic attack against a civilian population, despite having been placed under those headings. Along those same lines, he asked whether the delegation could confirm that enforced disappearance was subject to universal jurisdiction, in keeping with article 9 of the Convention, even if the offence involved an isolated act and therefore did not amount to a crime against humanity, and that no statute of limitation was applied to either isolated acts of enforced disappearance or those that occurred in a widespread or systematic fashion.

41. In the Fybeca case, he could understand why the police officers had not been charged with the offence of extrajudicial execution, since, at the time of the events, it had not been defined as such under Ecuadorian criminal law. However, the same did not seem to be true for enforced disappearance, given its nature as a continuous offence. Consequently, he sought clarification as to whether it was possible to change the definition of the offence in that case and adjust it to article 84 of the Criminal Code and asked whether the case was still pending.

42. Lastly, he enquired as to whether the temporary reassignment of police officers prevented their participation in an investigation from the moment that they were temporarily reassigned or from the moment that the investigation was initiated. He asked whether temporary reassignment was also used for members of the armed forces or for public servants in other government institutions that did not have law enforcement mandates, where a civil servant might have been implicated as an accomplice to the person issuing the order that had resulted in an enforced disappearance.

43. **Mr. Huhle** said that, in the experience of many States parties to the Convention, the methods and objectives pursued by criminal investigators and humanitarian search units in a missing persons case were sometimes consistent with each other; at other times, however, they could be at odds with each other or even mutually exclusive. That had to do with the fact that prosecutors were searching for the perpetrator, while humanitarian agencies were searching for the missing person. He asked whether the Government was aware of that problem and, if so, how it dealt with it.

44. **Mr. Hazan** asked whether the State party's DNA databases contained records pertaining to unidentified bodies that had been recovered, such that they could be cross-referenced with data collected from missing persons' relatives.

45. **Mr. de la Vega** (Ecuador) said that the Attorney General's Office relied on the services of the national police for support in investigations but not in respect of cases of enforced disappearance, as that would give rise to a conflict of interest. The mandate of the special unit of the national police was restricted to performing the administrative procedures involved in searching for persons who had gone missing. The armed forces did not participate in criminal investigations. When the Attorney General's Office did not have the capacity it needed for a particular case, it requested national or international cooperation, as had happened in the cases of disappearance documented by the Truth Commission. Those cases would be described in greater detail in the additional information that would be submitted to the Committee in writing.

46. **Mr. Andino** (Ecuador) said that, in accordance with the Constitution, criminal proceedings and penalties in respect of the offences of enforced disappearance and crimes against humanity, defined respectively in articles 84 and 89 of the Criminal Code, were not subject to statutory limitations.

47. **Ms. Argüello** (Ecuador) said that article 84 was applicable to isolated instances of enforced disappearance. Written information concerning the question of universal jurisdiction would be submitted to the Committee in due course.

48. **Mr. Cuellar** (Ecuador) said that the national police collected DNA samples from all unidentified bodies and kept a record of any osseous remains found in the course of police procedures. It then cross-referenced that information with its missing persons data in order to check for positive matches. Any investigation carried out by the national police was

conducted under the direction of the Attorney General's Office. If there was reason to believe that a particular missing persons case involved the commission of an offence, then both an administrative procedure to search for the person and a criminal investigation were commenced. The national police had no authority or delegated powers to investigate cases of enforced disappearance.

49. **Mr. Andino** (Ecuador) said that, under the terms of article 401 of the Criminal Code, universal jurisdiction applied to the offence of enforced disappearance. It was applicable even in an isolated instance of that offence.

50. **Ms. Peralta** (Ecuador) said that an investigation conducted by the Attorney General's Office could involve reliance on police personnel or civilian staff, as appropriate. The national police acted as an auxiliary body in such investigations. Information concerning the criteria used to investigate human trafficking would be submitted to the Committee in writing.

51. **Mr. Tinajero Mullo** (Ecuador) said that the forensic genetic database contained 373 samples relating to 334 unidentified bodies or skeletal remains. Each time new genetic data became available for a corpse or its remains, the data were cross-referenced with all family members for whom data had been compiled in the database. Similarly, when new genetic data were collected from family members, they were checked against the data pertaining to unidentified bodies or remains.

52. Article 424 of the Constitution established that the Constitution took primacy over any other law in the Ecuadorian legal order. It also stipulated that any human rights treaty ratified by Ecuador whose provisions recognized rights that were more favourable than those recognized by the Constitution prevailed over any other domestic legal statute or act of government. Article 80 of the Constitution stipulated categorically that the proceedings and penalties for crimes against humanity and for enforced disappearance were not subject to statutory limitations.

53. **Mr. de la Vega** (Ecuador) said that the delegation would submit to the Committee, in writing, additional information on all outstanding questions following the conclusion of the interactive dialogue.

The meeting rose at 5.30 p.m.

United Nations CED/C/SR.204

International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Twelfth session

Summary record of the 204th meeting
Held at the Palais Wilson, Geneva, on Thursday, 9 March 2017, at 10 a.m.

Chair: Mr. López Ortega (Rapporteur)

Contents

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Mr. López Ortega, Rapporteur, took the Chair.

The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Ecuador (*continued*) (CED/C/ECU/1; CED/C/ECU/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Ecuador took places at the Committee table.*

2. **Mr. Corcuera Cabezut** (Country Rapporteur) said that he wished to know whether the failure of a refugee to submit an application for asylum within the time frame stipulated by law would, as suggested by paragraph 76 of the State party's replies to the list of issues (CED/C/ECU/Q/1/Add.1), lead to the refoulement of the refugee, regardless of whether there were substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. It would be interesting to know what exactly that time frame was and what reasons the State party's authorities had for their seeming belief that requiring refugees to apply for asylum within a given period was fully compatible with the principle of non-refoulement. He wondered whether asylum seekers with provisional refugee status or those who were appealing the rejection of their applications for asylum were placed in migrant or other holding facilities pending the resolution of their appeals.

3. He would welcome confirmation that under the Criminal Code of 2014, prison officials were required to compile and maintain records for persons deprived of their liberty that included all the information mentioned in article 17 (3) of the Convention. An indication of the specific administrative measures that had been taken to ensure compliance with that requirement would be especially welcome. In addition, the delegation should indicate in which article and paragraph of the Code the requirement was established, whether it applied to all facilities where persons were deprived of their liberty, including psychiatric hospitals, juvenile detention centres and others, and whether any officials had been penalized for failing to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of their liberty.

4. He asked what practical steps had been taken to ensure that all persons deprived of their liberty had access to a lawyer and could communicate with their family or any other person of their choice from the outset of their detention. Merely stating what the law provided for in that regard was insufficiently informative. In that connection, it would be interesting to know whether any officials had been prosecuted for denying persons deprived of their liberty their right to a lawyer or their right to communicate with their relatives or any other person. Information on any specific steps that were taken to safeguard the rights of detainees as they were being released would also be welcome.

5. **Mr. Huhle** (Country Rapporteur) said that he would welcome information on the human rights training given to public officials — the police, for example — other than those working in the judicial system. It would be interesting to know whether that training included information regarding the provisions of the Convention.

6. He requested the delegation to provide additional information on the reparation obtained by the victims of enforced disappearances that had taken place before 2004. He wondered how many victims there had been, what form of reparation they had obtained, why the process of obtaining it had been so slow, whether anyone who had sought reparation had been denied it and, if so, what the reasons for the denial had been. In addition, he asked how many people who had been disappeared before 2004 had been found alive or dead and in how many cases the fate of the disappeared person had not yet been discovered. Information on the methods used to search for and locate disappeared persons would be welcome, as would an account of the efforts that were made to ensure that the remains of any disappeared person that were found were returned to the person's family in a fitting manner.

7. He wished to know how, when and by which authority a decision to initiate a search for a disappeared person was made. It was unclear, for example, on what grounds an investigation into the alleged enforced disappearance of José del Carmen Molano Ríos had been initiated. In the same connection, he requested an explanation of the process whereby

a decision was made as to whether an alleged case of enforced disappearance fell within the scope of the National Directorate for Offences against Life, Violent Death, Disappearance, Extortion and Illegal Confinement.

8. With regard to article 24 (7) of the Convention, he wished to know whether the family members of disappeared persons were placed at a disadvantage when they did not join organizations and associations concerned with attempting to establish the circumstances of enforced disappearances. In addition, he asked whether invitations to the twice-yearly meetings the President of Ecuador held with the family members of disappeared persons were extended to all such family members. More generally, how did the State party intend to maintain contact with those family members?

9. **Mr. Corcuera Cabezut** said that he would welcome an indication of the efforts the State party had made to ensure that no one could be expelled, returned or extradited to another State where there were substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture, as recommended by the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/ECU/CO/7, para. 22 (a)). The Ecuadorian authorities should also keep in mind the Committee's concerns about the insecure legal basis of the Ecuadorian national mechanism for the prevention of torture (CAT/C/ECU/CO/7, paras. 15 and 16). In addition, he requested an update on the status of the bill to amend the Office of the Ombudsman Organization Act and asked whether the Ecuadorian authorities were of the view that presuming a victim of enforced disappearance dead, which was provided for in Ecuadorian law, was compatible with article 24 (6) of the Convention.

10. **Ms. Janina** asked what protection Ecuador could afford to refugees or asylum seekers who, because they were deemed a threat to the security of the country, were turned back or refused entry at the border, returned, expelled, extradited or subjected to measures that exposed them to the risk of return to a country in which their life, freedom, safety or security were at risk. She would welcome an explanation of the responsibilities of the two separate bodies that appeared to handle refugee and asylum cases. It would be interesting to know how many cases those bodies handled a year and, in particular, whether there had been any complaints of rejections of applications for refugee status or asylum that had placed the applicant at risk of enforced disappearance.

11. **Mr. Hazan** asked whether the State party was developing capacity in specialized fields, such as forensic genetics and forensic anthropology, that would enable it to identify the remains of persons who might have been disappeared. In addition, he would welcome an explanation of the process whereby military or police intelligence material that could shed light on cases of enforced disappearance was declassified.

12. **The Chair**, speaking as a member of the Committee, asked whether, inasmuch as the definition of "enforced disappearance" in article 2 of the Convention encompassed short-term disappearances, the State party had put in place any mechanisms to ensure that family members were notified whenever detainees were transferred from one facility to another.

The meeting was suspended at 10.30 a.m. and resumed at 10.55 a.m.

13. **Ms. Íñiguez** (Ecuador) said that Ecuador had a larger population of refugees than any other country in Latin America. The country had no refugee camps, however, and prospective refugees were not placed in detention pending the resolution of their applications for refugee status. The Human Mobility Act, which would make it possible to better safeguard the rights of persons in situations of migration, had entered into force in February 2017. Additional information on the administrative and institutional changes the Act had entailed would be submitted in writing in due course.

14. The Act stated that, in exceptional circumstances, the authorities could consider applications for refugee status from applicants who failed to submit applications within the required time frame. The principle of non-refoulement underpinned the work of the relevant Ecuadorian authorities, who were developing protocols for cooperation with the Office of the United Nations High Commissioner for Refugees, including in airports, to ensure that that principle was fully respected in Ecuador.

15. **Mr. Tinajero Mullo** (Ecuador) said that all the country's prisons had adopted a new information management system in 2016. Prisons were required to record information about persons deprived of their liberty at the time of admission. The information recorded in the system included the name of the facility and the particular block in which the person was being detained, the date of the person's detention, the crime with which he or she had been charged and details concerning any transfers. Prison wardens and other officials had received training in the use of the new system. Prison personnel who failed to enter the required data were subject to penalties, including dismissal. Police and military barracks were not authorized to operate as detention facilities and, except in cases of flagrante delicto, no one could be detained without a written order from a judge.

16. Protocols for the compilation and maintenance of information on persons admitted to psychiatric hospitals had been developed, although the current focus was on deinstitutionalization and rehabilitation in the community.

17. Under the Criminal Code, all persons newly admitted to a prison were required to undergo a medical examination. The Code also listed the reasons for which a prison warden could order a prisoner's transfer and stated that a judge hearing any case involving a transferred prisoner was to be notified of the transfer immediately. Each prison's social and family reintegration unit notified family members of transfers by telephone. In the case of foreign nationals, the relevant consulates were informed, either by telephone or by mail. In some instances, it was possible for a person deprived of his or her liberty to appeal a transfer order.

18. Since 2008, law enforcement personnel had been required to receive training in human rights, special investigation techniques and crime prevention and control. Courses on human rights were an integral part of the training received not only by aspiring police officers in the country's police academies but also by fully fledged police officers seeking promotion to higher ranks. By 2015, some 96 per cent of the country's police officers had received in-service training on such topics as international human rights standards, the rights of persons deprived of their liberty and the rights of lesbian, gay, transgender and intersex persons. In view of the human rights expertise they had acquired, Ecuadorian law enforcement personnel had provided training to future trainers from the police forces of other Latin American countries. In 2016, in cooperation with the International Committee of the Red Cross, Ecuador had organized a meeting of senior law enforcement officials from across the region to address ways of maintaining public order while fully respecting human rights. Military personnel had received human rights training similar to that received by the police. Human rights were also a cross-cutting component of the curriculum of the recently inaugurated Prison Training Academy, which prepared future prison officers.

19. Persons deprived of their liberty had a constitutional right to communication with and visits from their relatives and legal professionals. Persons being held in pretrial detention were entitled to receive one visit a week, while for convicted prisoners that number varied depending on the level of security of the cell block in which they were held. A regulated prison visiting system, which had involved the development of a web-based appointment book for visitors, had been in place since the introduction of a new prison administration model in 2012. Public defenders were available to detainees who could not afford lawyers of their own. The country's largest prisons had designated time slots during which public defenders were always available for consultation.

20. The Truth Commission had recognized 17 direct victims of enforced disappearance, 5 of whom had later reappeared. The family members of one of the five, who had been placed in witness protection, had reached a non-material reparation agreement with the Ombudsman's Office before his reappearance. In several cases, the family members of the 17 disappeared or formerly disappeared persons had not sought to avail themselves of the Office's voluntary victim redress programme. The family members of four disappeared persons were currently exercising their right to obtain non-material reparation, which could take the specific forms listed in article 6 of the Act on Reparation for Victims and Prosecution of Serious Human Rights Violations and Crimes against Humanity.

21. **Mr. Andino** (Ecuador) said that the National Assembly had been considering since 2014 a bill to replace the Office of the Ombudsman Organization Act with a new act that

would provide a legal framework within which the Office could fulfil its constitutional mandate to act as the Ecuadorian national mechanism for the prevention of torture. The hope was that the new act would be published in the Official Gazette by the end of 2017. Nonetheless, under the Act currently in force, the Ombudsman's Office was required to visit the country's prisons and other facilities to ensure respect for human rights. A protocol for visits had been drawn up to enable the Office to comply with that requirement. The objectives of the Office's visits were to monitor the conditions of detention, produce reports on visits conducted and make recommendations to the relevant authorities. A copy of the protocol, which had been published in the Official Gazette in early 2016, would be forwarded to the Committee in due course.

22. **Mr. de la Vega** (Ecuador) said that the President of Ecuador was under no legal obligation to hold regular meetings with the relatives of disappeared persons but viewed that instead as a moral obligation. One of the goals of the meetings, in which representatives of a number of ministries and other public institutions took part, was to ensure that efforts to resolve cases of enforced disappearance were made in as coordinated and efficient a manner as possible. Since 2013, when the President had begun heading those meetings, some 100 cases had been addressed, and the President himself had requested the establishment of a technical secretariat to deal with them more thoroughly.

23. In response to the question about declassification, he said there were laws that set out specific procedures to be followed by anyone seeking the declassification of sensitive material. The work of the Truth Commission had led to the declassification of hundreds of thousands of documents. In addition, any of the public institutions represented on the country's highest security body, such as the National Council of the Judiciary, could initiate the declassification of classified material as and where necessary.

24. **Mr. Corcuera Cabezut** said that he wished to know exactly how long a person who had entered Ecuadorian territory had to submit an application for refugee status. As he had noted previously, he would welcome a comment on whether the authorities were of the view that requiring such applications to be submitted within a given time frame was compatible with the prohibition of non-refoulement. He asked whether an applicant whose circumstances were not considered sufficiently exceptional under article 100 of the Human Mobility Act would be refused refugee status for no reason other than his or her failure to submit an application within the established time frame. In view of the Committee against Torture's observation (CAT/C/ECU/CO/7, para. 21) that the State party might have engaged in practices contrary to the principle of non-refoulement and that the Regulations on Recognition of the Right to Asylum in Ecuador (Decree No. 1182) permitted exceptions to the principle of non-refoulement, he would welcome an explanation of how the State party evaluated the risks that individual applicants for asylum faced in the countries they had fled.

25. The information provided to the effect that a judge hearing a case involving a prisoner transferred from one prison to another was to be notified of the transfer suggested that the detained person had not yet been convicted. It would be interesting to know who was notified in the case of convicted prisoners. He would welcome a reply from the delegation to his questions on the measures taken by the State party's authorities on a prisoner's release and on whether they believed that legal provisions for presuming the victims of enforced disappearance dead were compatible with the presumption of life implicit in article 24 (6) of the Convention.

26. **Mr. Huhle** asked whether family members of victims of enforced disappearance had ever been excluded from participating in the biannual meeting with the President to review the progress made in each of the cases under investigation. As it was his understanding that, to date, victims of enforced disappearance had only been able to obtain reparation from the State for immaterial damages, he asked whether any victims had attempted to claim compensation for material damages and, if so, whether a claim for such compensation had ever been rejected. He would also be grateful to receive more information on the agreements under which reparation was granted to victims of enforced disappearance, including on the process of negotiation of the agreements between the victims and the State. He asked whether victims of enforced disappearance were given the opportunity to

participate in devising reparation measures and to provide input into the design of memorial projects.

27. **Mr. Corcuera Cabezut** said that it would be useful to know whether persons deprived of their liberty in migration detention centres, juvenile detention centres or psychiatric institutions enjoyed the same procedural guarantees as persons deprived of their liberty in penitentiary or pretrial detention centres. He would also like to hear more about the procedural guarantees available to persons in custody as from the time of their arrest. He asked at what stage the families of persons in custody were informed of their arrest and whereabouts, and wished to know whether those persons had immediate access to a lawyer.

28. **Mr. Decaux** said that it was his understanding that military prisons existed in nearly all countries and that the majority of military barracks had some sort of correctional facility for holding military personnel who had committed minor offences: those both constituted places of deprivation of liberty. He asked whether military prisons and correctional facilities within military barracks were subject to external oversight, whether the Ombudsman's Office had access to those places of detention and whether civilians could be held detained in such places.

29. **Mr. Hazan** asked whether newly declassified documents were publicized and disseminated and whether the families of victims of enforced disappearance were given priority access to those documents. He also wished to know whether it was possible for judges or prosecutors to be granted access to classified documents for the purpose of substantiating a case of enforced disappearance without those documents being declassified.

30. **Ms. Íñiguez** (Ecuador) said that the rights associated with human mobility, such as the right to apply for refugee status, were enshrined in the Constitution, which underpinned the recently adopted Human Mobility Act. The institutional framework for the protection of those rights comprised, inter alia, the Ministry of Foreign Affairs and Human Mobility, the Directorate General for Refugees, the Subsecretariat for Immigration and the Directorate for the Inclusion of the Foreign Community. The aforementioned institutions worked in partnership to implement the Human Mobility Act.

31. The Government had studied the recent recommendations of the Committee against Torture in respect of practices that the Committee had found to run counter to the principle of non-refoulement, especially at airport border posts, and the exceptions to the principle of non-refoulement in respect of asylum seekers permitted under article 34 of the Regulations on Recognition of the Right to Asylum in Ecuador, and it planned to submit a written response in due course. Ecuador recognized and generally upheld the principle of non-refoulement, although exceptional circumstances did occasionally arise. The statutory time limit for considering an application for refugee status was three months, which could be extended by a further 30 days if more facts were needed to take a decision. The Human Mobility Act laid down several criteria which had to be taken into account when considering an application for refugee status, such as the country's capacity to take in additional refugees, the potential risks facing the applicant and the best interests of the child in the case of unaccompanied minors. Applications for refugee status were considered on an individual basis. Applicants were invited to attend individual interviews where the potential risks facing them could be assessed. None of the costs associated with the application process were borne by the applicant.

32. **Mr. Tinajero Mullo** (Ecuador) said that, if a detained person was to be transferred from one place of detention to another, it was the sentence enforcement judge and not the trial judge who was informed. The Criminal Code assigned sentence enforcement judges the responsibility of monitoring the enforcement of sentences ordered by a competent institution of the social rehabilitation system and required there to be at least one sentence enforcement court in any town where a place of deprivation of liberty was located. The procedural guarantees applicable to detainees who had been released were the same as those applicable to detainees who were subject to transfer.

33. The Act on Reparation for Victims and Prosecution of Serious Human Rights Violations and Crimes against Humanity had established the obligation for the Ministry of Culture and Heritage to begin the process of establishing the Museum of Memory in order to document and pay tribute to the victims of serious human rights violations and crimes

against humanity, including those listed in the final report of the Truth Commission. The Ministry would hold consultations with victims and their families prior to commencing work on the museum to afford them an opportunity to provide input.

34. Responding to the question about external oversight of places of detention, he recalled that, under the Constitution, only persons having received a sentence of deprivation of liberty by reason of a final conviction were to be placed in social rehabilitation centres and that only social rehabilitation and temporary detention centres were part of the social rehabilitation system and were authorized to hold persons deprived of their liberty. Military, police or other barracks were not authorized places for the deprivation of liberty of civilians.

35. **Mr. de la Vega** (Ecuador) said that there was a single social rehabilitation system and that it did not include any sort of military premises. Moreover, members of the armed forces could not be placed in administrative detention; their deprivation of liberty had to be ordered by a competent judicial authority and could only be effected in a suitable place of detention.

36. **Mr. Andino** (Ecuador) said that the Criminal Code likewise provided that only temporary detention and social rehabilitation centres were authorized to hold persons deprived of their liberty. The only other facilities permitted to do so were young offender centres.

37. The Criminal Code authorized sentence enforcement judges to conduct at least one monthly inspection of places of deprivation of liberty to verify the enforcement of the penalty imposed and compliance with the rights of detainees. They were also empowered to order detainees to appear before them for monitoring purposes and to order whatever measures they deemed appropriate to prevent or correct any irregularities observed. He emphasized that only sentence enforcement judges — and not trial judges — had that mandate.

38. The presumption of death of a person reported disappeared was regulated by the Civil Code. Provided that the applicable legal formalities and deadlines had been respected, any interested party could request a declaration of presumed death from the competent judge for the purposes of the adjudication of ownership of the disappeared person's property. The Criminal Code established that, once a person had been reported disappeared, the investigation into his or her disappearance could not be closed until his or her whereabouts became known.

39. **Mr. de la Vega** (Ecuador) said that the current mechanism for dealing with missing persons had not been designed specifically for searching for and locating victims of enforced disappearance. In fact, no case of enforced disappearance had been brought to the Government's attention since the current mechanism had been implemented. All past cases of enforced disappearance had been dealt with by the Truth Commission. None of the cases of missing persons was understood to be attributable to enforced disappearance.

40. Declassified documents were in the public domain and could be accessed, disseminated and used without restriction by interested citizens, civil society and non-governmental representatives for the purposes of substantiating a case. Ecuadorian law provided for the possibility of granting authorized persons access to classified documents for the same purposes on the condition that a chain of custody was established and respected and that the recipient abided by his or her legal obligation not to disseminate the information, on pain of criminal penalty.

41. **Ms. Argüello** (Ecuador) said that the national police training curriculum, which was set by the National Secretariat for Higher Education, Science and Technology, had undergone a major overhaul that had been overseen by an institution with no connection to the national police; input had been received from the Central University of Ecuador. The overhaul of the curriculum coincided with a more wide-ranging reform of police doctrine intended to build the capacity of police officers to guarantee citizens' rights. As a result, both the curriculum and the doctrine included a human rights component.

42. The Constitution and the protocols currently in force established the obligation for the arresting police officer to inform detainees at the time of their arrest of their right to communicate with a family member or with another person of their choice and of the

grounds for their arrest. The arresting officer was also required to inform the public prosecutor of the arrest and to arrange for detainees to undergo a medical examination prior to them being deprived of their liberty.

43. The various institutions providing forensic medicine and forensic science services came under the authority of the Attorney General's Office. Significant efforts had been made to decentralize the aforementioned services and, over the past decade, two new specialized laboratories and eight decentralized forensic centres had been opened. Substantial resources had also been invested in upgrading essential equipment and technology to improve the quality of services rendered. There were currently two forensic anthropologists covering the whole of the national territory. Moreover, staff working in the area of forensic medicine and forensic science services were provided with continuous training. The process of building the country's capacity in that area was expected to continue for several years to come.

44. **Mr. Velasco** (Ecuador) said that the reparation mechanism for victims of enforced disappearance had been established pursuant to the Act on Reparation for Victims and Prosecution of Serious Human Rights Violations and Crimes against Humanity, which had been adopted following the publication of the final report of the Truth Commission. The period preceding the publication of the report had been devoted to documenting cases of serious human rights violations, particularly violations which had occurred between 1984 and 1988. Citizens who considered themselves to be victims of such violations were encouraged to come forward and document their case. The declassification of a large number of documents had allowed many alleged human rights violations to be substantiated. The information gathered had been collated and subsequently published by the Truth Commission. The final report listed individual cases, including the facts of the case, the name of the victims, the rights violated and whether the perpetrators had been identified and brought to justice.

45. Following the publication of the report, the National Assembly had adopted the Act on Reparation for Victims and Prosecution of Serious Human Rights Violations and Crimes against Humanity, whereby the Ecuadorian State recognized its objective responsibility for the human rights violations documented by the Truth Commission and the administrative reparation programme had been introduced. The Ombudsman's Office was responsible for dispensing administrative reparation for immaterial damages to victims of enforced disappearance and their families. Eligible citizens simply needed to approach the Ombudsman's Office to have their identity verified, after which they could benefit from the applicable reparation measures. Participation in the mechanism remained completely voluntary. Compensation for material damages was awarded by a negotiating committee, presided over by the Ministry of Justice, and calculated on the basis of the parameters established by the Act and the Inter-American Court of Human Rights. Victims reserved the right to submit to the negotiating committee other parameters that applied to their case. Victims who were unable to provide documentation to support their claim were entitled to compensation on an equal footing with victims who could. When the negotiating committee and the victim had decided on a settlement figure, a compensation agreement was drawn up and, once it had been ratified, the compensation was immediately payable in cash. No claim for compensation for material damages had ever been rejected. Those victims who had not yet availed themselves of the reparation mechanism were still at liberty to do so.

46. **Mr. Tinajero Mullo** (Ecuador) said that, in several cases, the Attorney General's Office had requested international assistance in locating disappeared persons, such as for conducting DNA analyses and in reconstructing the facts of a given case. In 2013, the Office had ordered an unannounced inspection of police archives which were found to contain information that had helped clarify various cases of enforced disappearance. It had ordered a second such inspection of police archives in 2015, which had uncovered information on various cases of enforced disappearance, including cases investigated by the Truth Commission and Human Rights Directorate. The information gathered had been transmitted to the national archives for classification and preservation and had been used to shed light on serious human rights violations and to identify those responsible.

47. **Mr. Corcuera Cabezut** said that he wished to thank the delegation for the openness, cordiality and respectfulness with which it had participated in the interactive dialogue with

the Committee and for the wealth of information that it had provided. The Committee greatly appreciated the multidisciplinary composition of the delegation, which had enhanced the quality of the dialogue. Given that the Committee had only a short time in which to draft its concluding observations, it would be helpful if those members of the delegation wishing to submit additional information in writing within 48 hours could make their written submissions as succinct as possible to facilitate that task.

48. **Mr. Huhle** said that the conclusion of the consideration of the State party's initial report did not spell the end of the dialogue between the Committee and the State party. The Committee looked forward to receiving supplementary information in writing and wished to remind the State party that the Committee's concluding observations would include recommendations with a fixed time frame for implementation, after which it should report on the steps that it had taken to act upon the recommendations in question. He hoped that the State party would approach its future interactions with the Committee in the same spirit of cooperation and openness.

49. **Mr. de la Vega** (Ecuador) said that it had been a privilege for his delegation to meet with the Committee to discuss the complex issue of enforced disappearance and that he was grateful to its members for having created the conditions for an open, dynamic and flexible dialogue.

50. Over the preceding decades, Ecuador had made great strides towards development in all spheres, as indicated by its falling homicide rate and a marked reduction in inequality. The Government of Ecuador recognized the need to adopt robust policies, plans and programmes to support the implementation of its revised legal framework in order to prevent it from remaining dead letter. It was also aware of the need to continue consolidating its newly established institutional structures.

51. The Government of Ecuador viewed the consideration of its initial report as the beginning of a permanent, ongoing dialogue with the Committee. It also welcomed the opportunity to learn from the experiences and best practices of the Committee and other States parties. While the Government of Ecuador did not consider enforced disappearance to be a widespread phenomenon in its national territory, it remained committed to building its capacity to address that phenomenon. However, it maintained that monitoring mechanisms alone would not be sufficient to eradicate the scourge of enforced disappearance. The key to doing so lay in changing the structures that had allowed it to occur in the first place and in changing the attitudes of public servants, including members of the judiciary, the national police and the armed forces. The Government of Ecuador had made significant efforts towards achieving that goal, as demonstrated by the overhaul of the national police and armed forces training curriculum and the inclusion of a human rights component therein. In addition, the national security doctrine had undergone a radical transformation and now prioritized citizens' welfare over national interests; that had paved the way for significant structural changes within the national police, previously considered to be an offshoot of the armed forces and not an institution mandated to serve the community. Such structural changes had undoubtedly helped preclude the commission of enforced disappearance.

52. **The Chair** said that he wished to express his gratitude to the delegation on behalf of the Committee for what had been a productive, fruitful and constructive dialogue on the occasion of the consideration of the initial report of Ecuador. He looked forward to continuing the interactive dialogue with the State party in the future.

The meeting rose at 12.50 p.m.

The meeting was called to order at 3.10 p.m.

Meeting with States Members of the United Nations

Meeting with non-governmental organizations and civil society

1. **The Chair**, recalling that the General Assembly had recently convened a high-level meeting in New York to commemorate the tenth anniversary of the adoption of the Convention, said that, at that event, the United Nations High Commissioner for Human Rights had called on more States to ratify the Convention and had suggested that the Committee should set itself the goal of doubling the number of States parties to the Convention within a specified time period.

2. Although the Convention had been ratified by 56 States Members of the United Nations, only 22 of those States had recognized the competency of the Committee to receive communications under articles 31 and 32 of the Convention. In the light of that situation, he suggested that the Committee might wish to discuss ways of increasing the number of States parties to the Convention and consider why some States parties had not yet recognized the competency of the Committee to receive communications. Any States that were reluctant to ratify the Convention because they were already overburdened with reporting obligations should note that the Convention did not require States parties to submit periodic reports.

3. **Mr. Hazan** said that he wished to acknowledge those States parties that had attended the first Conference of the States Parties to the Convention, held on 19 December 2016, at which it had been decided that the Convention would continue to be monitored by the Committee.

4. **The Chair** said that the Committee would take seriously the comments made by States parties at the Conference and would strive to address any concerns that had been raised.

5. **Mr. Decaux**, welcoming both the recent confirmation of the Committee as the monitoring body for the Convention pursuant to its article 27 and the commemoration of the tenth anniversary of the adoption of the Convention, said that the challenge remained of meeting the targets set in General Assembly resolution 68/268 on the strengthening of the human rights treaty body system.

6. The Committee would need to launch an effective communication strategy if it wished to achieve the goal of doubling the number of States having ratified the Convention within five years. Steps should be taken to produce, translate and disseminate documentation on the Convention, such as the explanatory leaflet produced by the Secretariat for the members of the General Assembly.

7. **Mr. Heinzer** (Switzerland), after noting that Switzerland had ratified the Convention in December 2016, said that statements submitted to the Human Rights Council and the universal periodic review process could be a useful way of encouraging more States to ratify the Convention. He would welcome information about the Committee's views on the treaty body strengthening process, specifically on the targets set in General Assembly resolution 68/268.

8. **The Chair**, in welcoming the ratification of the Convention by Switzerland, said that the number of States parties to the Convention was steadily increasing.

9. **Ms. Gobbi** (Argentina) said that Argentina fully supported the work carried out by the Committee, which had always responded swiftly to the requests it received for urgent action. The importance of the recommendations made as part of the universal review process had been demonstrated by the fact that the Government of Czechia had recently thanked the Government of Argentina for recommending that it ratify the Convention. According to the Government of Czechia, the recommendation in question had played an important part in facilitating the ratification process.

10. The dialogue between the Committee and States was important in that it fostered cooperation and provided information on the action that the Committee planned to take in the future. It was hoped that such dialogues would continue to be held.

11. **The Chair** said that the Committee had reason to be grateful to the Governments of Argentina, France, Japan and Morocco as they had been instrumental in the process of drafting, adopting and subsequently strengthening the Convention.

12. **Mr. Figallo Rivadeneyra** said that it was important for the Committee and the States parties to work together to encourage more States to ratify the Convention. States that had ratified the Convention had overcome a number of obstacles in order to do so and therefore had valuable experience that should be shared with other States. Likewise, the States parties that had made the declarations under articles 31 and 32 of the Convention should help other States parties to do so by sharing information on how they had managed to overcome the various obstacles that they had faced.

13. The Convention formed part of an interrelated legal framework that also covered the crime of torture, the issue of refugees, extradition and other matters. The question of enforced disappearance therefore concerned relations between States, rather than individual States. For that reason, it was necessary for States to work together to increase the number of ratifications of the Convention.

14. **The Chair** said that prospective States parties would not receive an overwhelming number of complaints upon ratifying the Convention as victims usually had various options available, depending on the instruments to which their State was a party, and they would seek help from the treaty body that was best able to assist them in their particular situation.

15. **Mr. Huhle** said that it was not clear why some States in which enforced disappearance was a serious problem had not ratified the Convention, while others in which the problem barely existed had ratified it. It was equally important for every State to be a party to the Convention, irrespective of whether enforced disappearance was a significant problem for it individually. Most States that had ratified the Convention had confirmed that taking that step had been useful in enabling them to address not only the problem of enforced disappearance but also other aspects of their domestic legislation. It was necessary to determine what prevented certain States from ratifying the Convention.

16. **The Chair**, concurring that it was necessary to find out why certain States had failed to ratify the Convention, noted that very few Asian countries were parties.

17. **Ms. Shino** (Japan) said that countries in all regions, including Asia, were affected by the phenomenon of enforced disappearance. For that reason, Japan took every opportunity to encourage other States to ratify the Convention. In explaining why they had not ratified the Convention, some States had indicated that they were overwhelmed by existing reporting obligations, while others had said that, in their opinion, the issue of enforced disappearance was covered by other international instruments. In her view, the latter argument should be countered by drawing attention to the cases of enforced disappearance that were not covered by any other instrument.

18. As the number of ratifications increased, it would become increasingly difficult for the Committee to identify which States parties had problems that needed to be addressed, particularly as there was no periodic reporting requirement. In view of that situation, she wished to know how Committee members proposed to ensure that problems involving enforced disappearance would be identified and addressed.

19. Lastly, she suggested that the Committee should share its experience with other committees to enable them to work more effectively.

20. **The Chair** said that the annual meeting of the Chairs of the human rights treaty bodies provided an opportunity to discuss the strengths and weaknesses of each Committee's working methods. As more States ratified the Convention and submitted their initial reports, the risk that the Committee would encounter challenges in considering those reports in a timely manner would, in fact, increase. The number of requests for urgent action received from each State party gave a good indication of which States faced problems in the area of enforced disappearance.

21. **Ms. Lecaros Terry** (Peru) said that Peru had attended the Conference of the States Parties to the Convention in December 2016 and had supported the renewal of the Committee's mandate. The Convention was an important instrument that should be ratified by all States. The reluctance of some States to do so could perhaps be explained by an unwillingness to be questioned, examined and held to account by the Committee and by the fear that political groups or interests might use the process as a pretext for attacking Governments.

22. **The Chair** said that those concerns highlighted the need for States parties to ensure that they appointed experts to treaty bodies who operated in an independent and impartial manner in accordance with General Assembly resolution 68/268.

23. **Mr. Michel Blin** (Mexico) said that, by ratifying the Convention, a State showed that it was genuinely committed to promoting and protecting individuals from the crime of enforced disappearance. Mexico was convinced that the work of the Committee helped it to address the significant challenges that it faced in eradicating that crime. The progress that it had made in that regard was demonstrated by the fact that a draft law to harmonize legislation on enforced disappearance was currently under consideration.

24. It was most likely true that some States were reluctant to subject themselves to international scrutiny out of fear that they would be criticized in the concluding observations issued by treaty bodies. Despite the domestic political cost that it had sometimes incurred, Mexico had ratified the instruments of all the treaty bodies and received visits from various special rapporteurs.

25. **The Chair**, noting that some States parties had commented on the extent to which they had been scrutinized, said that, to use a medical analogy, it was better to be over-examined than never to go to the doctor.

26. **Mr. Huhle** said that, as the case of the Syrian Arab Republic had showed, States that declined to ratify international instruments did not escape international scrutiny. Mexico was to be commended on its willingness to expose itself to such scrutiny. Referring to the absence of periodic reports, he agreed that the Committee would likely have difficulty monitoring the situation of enforced disappearance in the various States parties. In that regard, he would welcome suggestions on how to create a fair, economical system for scrutinizing States parties that would be successful in the long term.

27. **Mr. Alatiyyah** (Iraq), after congratulating the Committee on the renewal of its mandate, said that he endorsed the statements made by the representatives of Japan and Mexico. The Convention filled a significant gap in human rights law and ratification of the Convention was a recommendation that Iraq often made in the context of the universal periodic review. While he recognized that the lack of a periodic reporting requirement posed some challenges, which he was confident the Committee would successfully resolve, it was also an incentive to become a party to the Convention. In response to the reluctance of some States to open themselves up to yet more international scrutiny, the Committee could hold Iraq up as an example of a State that had not let its difficult security situation and the myriad implications thereof deter it from ratifying the Convention.

28. **The Chair** said that enforced disappearance was indeed a global issue, as witnessed by the fact that the mandate of the Working Group on Enforced or Involuntary Disappearances, originally established with a specific region in mind, had been continuously renewed in order to address situations that had emerged from time to time in new areas around the globe.

29. **Mr. López Ortega,** thanking the States parties for their confidence in the Committee as illustrated by the renewal of its mandate, said that the Committee had managed to more than double the number of States parties in its first six years and had committed to doubling the current figure over the coming five years. The Committee had much to be proud of, in particular the adoption of its rules of procedure, the establishment of a highly effective system for monitoring States and protecting victims, and the consolidation of jurisprudence. However, it had struggled in some areas, chiefly in terms of ratification. While States had to accept the fact that being part of the United Nations

implied being subjected to a degree of criticism, it was also true that the treaty bodies had a role to play in mitigating the disadvantages of the current system.

30. A larger concern was the regionalization of the Convention to the detriment of its universality and, consequently, of its wider ratification. The reluctance to ratify was not limited to Asian countries and was partly due to the perception that the Convention was relevant only to States where enforced disappearance was a problem. However, the Convention was not just about enforced disappearance per se; it was, above all, about prevention. The Convention was the most comprehensive international instrument that regulated the guarantee of liberty of the person and interpreted the rights of persons deprived of their liberty, and that was of relevance to all States.

31. Recalling that between 2017 and 2019 the Committee would see a complete turnover of its original membership, he said that the new membership would have to seriously reflect on the development of the Convention in the decade to 2030.

32. **Mr. Decaux**, referring to the substantive discussions held with Member States, said that they reflected the system's growing maturity. In relation to the question on the Convention's value added, he pointed out that the Convention was not only a compilation of the provisions of other United Nations and regional treaties but it also provided for a new human right, namely that of not being subjected to enforced disappearance. Defining an act as an offence led to the establishment of legal regimes and penalties commensurate with the seriousness of the offence. Furthermore, the Convention contained modern preventive measures. It was a twenty-first century instrument that provided an innovative bridge between criminal law, international criminal cooperation and preventive measures.

33. Regarding General Assembly resolution 68/268, it would be crucial to create areas of synergy among all the treaty bodies so as to make international human rights law more consistent and ensure the rationality of the system as a whole. However, it was equally important to defend the specificities of the Convention and the Committee's mandate, in particular the absence of a periodic reporting cycle. The Committee had to remain nimble in order to facilitate the process for States parties but also to respond quickly whenever the need arose. It was because of those competing interests that the resolution had been so carefully worded. The Chairs of the treaty bodies might endorse guidelines but, ultimately, each Committee adopted or adapted measures to fit its specific mandate. Thus, it was more realistic to seek to strengthen the treaty body system rather than try to overhaul it.

34. **Mr. Hazan**, acknowledging that other instruments indeed dealt with the need to criminalize and investigate cases of enforced disappearance, locate victims and prevent further cases from being perpetrated, said that what set the Convention apart was that it provided guidance on how to achieve those objectives, which was a good argument in favour of ratification. The Committee was in the process of determining how to continue to monitor States parties once they had submitted their initial — and only — report. It was a considerable challenge to develop an effective and flexible alternative to the traditional reporting model that would be convenient for States but still ensure the defence of victims.

35. **Mr. Salifou** (Togo), basing himself on the experience of Togo, said that States in which enforced disappearance was not a problem may not have ratified the Convention simply because of a lack of resources or institutional capacity. In addition, lawmakers sometimes needed to be convinced why enforced disappearance should take precedence over other issues. In that connection, the universal periodic review had been very useful for Togo.

36. **The Chair** said that he agreed that more work had to be carried out with legislatures.

37. **Ms. Balthar** (Brazil), in reaffirming the commitment of Brazil to the tenets of the Convention and to cooperating with the Committee, said that respect for human rights was enshrined in the Brazilian Constitution and was a component of the country's foreign policy. Referring to the point raised about the degree of scrutiny being exercised, she said that Brazil was of the view that international monitoring strengthened States and their public policies. Given the perception that the Convention was an instrument designed specifically for Latin America, she asked how the Committee addressed the topicality of enforced disappearance as a global issue.

38. **Mr. Elgannas** (Libya), while commending the Committee on its work, said that Libya was not yet a party to the Convention because it simply was not ready. It currently lacked both stability and institutional capacity; without support from the international community, that situation would not be resolved. At the same time, the Government of National Accord was still struggling to impose its legitimacy. The foregoing notwithstanding, the Government was receiving encouragement to consider becoming a party to human rights instruments and to engage fully with associated mechanisms. The Presidential Council had reiterated its commitment to interacting with human rights mechanisms in a positive manner, and the Government had issued a statement on the occasion of the International Day of the Victims of Enforced Disappearances. It was to be hoped that all cases of enforced disappearance, both those perpetrated before and after 2011, would receive the Government's attention shortly.

39. **Ms. Pagès** (Geneva for Human Rights), after congratulating the Committee on the renewal of its mandate, said that the offence of enforced disappearance had always been a priority for her organization, which had been actively involved in the establishment of the Working Group on Enforced or Involuntary Disappearances in 1980, the drafting of the Declaration on the Protection of All Persons from Enforced Disappearance in 1992 and the negotiation of the Convention. Geneva for Human Rights had monitored all the Committee's sessions and had held three expert meetings with the Committee and the Working Group. In 2016, its focus had been on preparing for the Conference of the States Parties to the Convention, including by distributing a list of the Committee's activities to non-governmental organizations (NGOs), calling on associations of relatives and other human rights organizations to prepare statements for the Conference and holding a preparatory meeting with NGOs. At the Conference, Geneva for Human Rights representatives had read out a number of statements on behalf of various NGOs.

40. She welcomed the political momentum created by the High Commissioner's call at the high-level meeting held in New York to double the number of ratifications within five years. It was an ambitious target that could be achieved only through a multi-actor strategy involving States and coalitions of relatives and human rights organizations. In that connection, Geneva for Human Rights, jointly with the Geneva Centre for Security Policy, would be holding an expert meeting on enforced disappearance in September 2017; she invited the Committee to attend a preparatory workshop that would be held on 15 March 2017.

41. **Mr. Al-Obaidi** said that he had received a request for information from Libya a few months prior on how to put in place the requisite system. Pointing out that States should not wait for enforced disappearance to become a problem for them before ratifying the Convention, he urged all States to ratify the Convention, especially those in the Middle East.

42. **The Chair** thanked the participants for their valuable input.

The discussion covered in the summary record ended at 5 p.m.